APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,671	05/21/2004	John S. Smyth	BUR920040064US1	3670

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EXAMINER
RECEK, JASON D

ART UNIT	PAPER NUMBER
2142	

NOTIFICATION DATE	DELIVERY MODE
09/23/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

btviplaw@us.ibm.com
PTOCommunications@hoffmanwarnick.com

	Application No.	Applicant(s)
Office Action Summary	10/709,671	SMYTH ET AL.
	Examiner	Art Unit	
	JASON RECEK	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>23 May 2008</u>.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-8,10-23 and 25-31</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) <u>1-8,10-23 and 25-31</u> is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____ .
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)
1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____ .
4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

This is in response to the amendment filed on May 23rd 2008 which concerns

application 10/709671.

Status of Claims

Claims 9 and 24 have been cancelled.

Claims 1-8, 10-23 and 25-31 are rejected under 35 U.S.C. 103(a).

Response to Arguments

1.   Applicant's arguments with respect to the 101 rejections have been fully

considered and are persuasive. The 101 rejection has been withdrawn.

2.   Applicant's argument with respect to the rejection(s) of claim(s) 1-31 under

103(a) has been fully considered but is not persuasive. Specifically, the argument that

Eden and Peterson do not disclose "determining whether a query of the network resource

to determine network resource availability and response time is occurring" is not

persuasive. Peterson teaches a technique for determining whether a query is occurring

(dampening window). Peterson also teaches to query for errors and performance

(paragraph 11) thus the query determines network resource availability and response

time. Applicant also argue that Peterson does not disclose when this determining occurs

and thus does not teach to perform the determining step "in the case that the status

indicator indicates ...". This argument is also not persuasive. Eden teaches determining

and indicating when resources are available, thus the combination of Eden and Peterson

teach the limitation as recited by amended claim 1. See below for a detailed explanation.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 1-8, 10-23 and 25-31 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Eden US 2002/0184361 A1 in view of Peterson et al. US

2004/0010584 A1 and further in view of Reps et al. US 6,070,190.

Regarding claim 1, Eden discloses "querying the network resources to determine

network resource availability" as querying network devices (paragraph 10, Fig. 13),

"setting a status indicator" as changing a GUI (paragraph 12, Fig. 13), "in the case that

the status indicator indicates that the network resources is available ..." as making a

determination as to which devices are available (paragraph 10), and "setting the status

indicator to indicate the network resource is available only if a time of the query is less

than a specified response time" as having a timeout value, thus the resource cannot be

available unless the query time is less than the timeout value (paragraph 33).

Eden does not explicitly disclose "determining whether a query of the network resource to determine network resource availability and response time is occurring" however this is taught by Peterson as a dampening window whereby the result will not be indicated while the query is occurring (paragraphs 12-13). This dampening window determines whether a query is occurring (Fig. 2 paragraph 47). Peterson teaches querying for errors (availability) and performance (response time), see paragraph 11. Peterson does not by itself teach to perform this determination only when a status indicator indicates the network resources are available however Eden teaches indicating when resources are available.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Eden by including the dampening window taught by Peterson for the purpose of ensuring no test (query) is presently occurring. The motivation for doing so is to allow the query to complete before returning results (Peterson paragraph 35).

Regarding claim 2, Eden discloses "indicating that the network resources is available" as changing status to available (paragraph 59).

Regarding claim 3, Eden discloses "repeating querying the network resource" as querying again (paragraph 35).

Regarding claim 4, Eden does not explicitly disclose "a querying indicator that indicates whether querying is occurring" however it would be inherent that the system knows whether a query is occurring, once started, the system waits for a response or

timeout (Fig. 13), until one of these events occurs the system knows whether it is querying. It would have been obvious to one of ordinary skill in the art at the time of the invention to add an indicator for the purpose of more easily ascertaining when the system is querying. Status indicators are well known in the art.

Regarding claim 5, Eden does not specifically disclose "updating an average query completion time using the response time" however Eden does teach updating the timeout period (paragraph 33). One of ordinary skill in the art would understand that the timeout period is related to the completion time and thus updating the timeout period would take into account the completion time. Also it is simple mathematics that the average time is a product of the response times. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to update the average query completion time using the response time.

Regarding claim 6, Eden does not explicitly disclose "the specified response time is equal to a value within a threshold" however this is taught by Peterson as a using a threshold to determine whether a test was performed in time (paragraph 90). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Eden by using a threshold as taught by Peterson for the purpose of ensuring good data. The motivation for doing so is to eliminate bad data that would skew the average.

Regarding claim 7, Eden discloses "setting the status indicator to unavailable" as representing a device as unavailable (paragraph 36).

Regarding claim 8, Eden discloses "a query computer … and a status computer"

as a computer system that queries and represents the status of network devices (paragraph

29).

Regarding claims 10-15, they are system claims that correspond to the method of

claims 1-7, therefore they are rejected for the same reasons.

Regarding claims 16-22, they are computer medium claims that correspond to the

method of claims 1-7, therefore they are rejected for the same reasons.

Regarding claim 23, it is a method claim that correspond to the system of claim 8,

it is therefore rejected for the same reasons.

Regarding claims 25-30, they are method claims that correspond to the system of

claims 10-15, thus they are rejected for the same reasons.

Regarding claim 31, it is a system claim that correspond to the method of claim 1

with the additional limitation that the query is received "from a client", Eden discloses a

client server system (paragraphs 50-55), and the rest of the claim is rejected for the same

reasons as the method in claim 1.

Conclusion

5.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON RECEK whose telephone number is (571)270-1975. The examiner can normally be reached on Mon - Thurs 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status

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more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

Customer Service Representative or access to the automated information system, call

800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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